IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 53 of 2001

with

CIVIL APPLICATION NO.5443 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LEGAL HEIRS OF DECD. PATEL RANCHHODBHAI RAICHANDDAS

Versus

PATEL MAHENDRAKUMAR SHAMBHUBHAI

Appearance:

1. Second Appeal No. 53 of 2001

MR MANISH R RAVAL for appellant No. 1-1/7

MR BHARAT T RAO for Respondent No. 1

2. Civil Application No.5443 of 2001

MR MANISH R RAVAL for applicants

MR BHARAT R RAO for opponent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2001

ORAL JUDGEMENT

Present appellants-original defendants has filed this Second Appeal against the judgment and order passed by the learned District Judge, Mehsana in Regualr Civil Appeal No.68 of 1999 whereby he has set aside the judgment and decree passed by the learned Joint Civil Judge (J.D.), Kadi in Regular Civil Suit No.143 of 1996 and directed the Court below to decide the issue of limitation along with the other issues.

2. At the joint request made by the learned counsel appearing for the respective parties, this Second Appeal has been taken up for final hearing today.

3. A suit being Regular Civil Suit No.143 of 1996 was filed by the present respondent-original plaintiff in the Court of learned Civil Judge (J.D.), Kadi for declaration and permanent injunction. When it came up for hearing, respondent raised preliminary objection regarding the law of limitation and, therefore, specific issue was framed by the learned Judicial Magistrate (First Class) and ultimately, it was decided by the learned Joint Civil Judge (J.D.) by holding that the suit of the plaintiff is bared by law of limitation and it is premature against which, appeal has been preferred against the said judgment and decree being Regular Civil Appeal No.68 of 1999. At the time of hearing of the appeal, learned Joint District Judge came to the conclusion that learned Trial Judge came to a contrary conclusion because on the one hand, learned Trial Judge held that the suit is barred by law of limitation and on the other hand, he held that plaintiff's suit is premature. Learned Judge also came to the conclusion that the issue of law of limitation is a mixed question of facts and law and, therefore, it is required to be dealt with along with other issues. Against the judgment and order of the learned Joint District Judge, this Second Appeal has been preferred by the present appellants-original defendants.

4. Pursuant to issuance of notice, learned counsel, Mr.B.T.Rao, has appeared on behalf of the respondent.

5. I have heard learned counsel for the parties and also gone through the reasoned order passed by the Courts below.

6. In short, appellants-original defendants has come to this Court against the judgment and decree passed by the appellate Court wherein he has set aside the judgment and decree passed by the trial Court and matter was

remanded to the court below by giving cogent reasons. Learned counsel for the appellants is not able to convince me so as to interfere with the judgment and order passed by the appellate Court at this stage. When the matter is remanded by the appellate Court by holding that the view taken by the Court below is contrary to each other and the question of limitation is a mixed question of facts and so, same cannot be decided as a preliminary issue, but can be decided along with other issues. When the learned counsel for the appellants is not able to convince me on any material aspects of the matter for interfering with the judgment and order of the Courts below wherein he has only remanded the matter for trial, I do not think it necessary to interfere with the judgment and decree passed by the Court below. In these circumstances, this Second Appeal is required to be rejected.

7. This Second Appeal is hereby rejected. Notice is discharged.

8. In view of the rejection of Second Appeal No.53 of 2001, Civil Application No.5443 of 2001 does not survive and is disposed of accordingly.

(R.P.DHOLAKIA,J.)

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